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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

TWIN CITY POWER COMPANY OF GEORGIA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on April 12, 1955.

OPINIONS BELOW

The opinion of the court of appeals (pp. 1a-10a, *infra*) is reported at 221 F. 2d 299. The district court filed three opinions, dated October 4, 1949 (R. 1-19), August 27, 1953 (R. 100-112), and November 14, 1953 (R. 113-117). The first two of these opinions are reported, appearing at 86 F.

Supp. 467 and 114 F. Supp. 719, respectively. The commissioners' report to the district court is set forth at R. 21-99.

JURISDICTION

The judgment of the court of appeals (p. 10a, *infra*) was entered April 12, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

When the United States, exercising the power of eminent domain, condemns land on a navigable river for a project in aid of navigation, is the condemnee entitled to receive, as an element of just compensation for "private property" taken, a special increment based upon the land's adaptability to use as a site for hydroelectric power operations?

STATUTE INVOLVED

The Act of December 22, 1944, c. 665, 58 Stat. 887, provides in pertinent part:

> In connection with the exercise of jurisdiction over the rivers of the Nation through the construction of works of improvement, for navigation or flood control, as herein authorized, it is hereby declared to be the policy of the Congress to recognize the interests and rights of the States in determining the development of the watersheds within their borders and likewise their interests and rights in water utilization and control, as herein authorized to preserve and protect to the fullest possible ex-

tent established and potential uses, for all purposes, of the waters of the Nation's rivers; to facilitate the consideration of projects on a basis of comprehensive and coordinated development; and to limit the authorization and construction of navigation works to those in which a substantial benefit to navigation will be realized therefrom and which can be operated consistently with appropriate and economic use of the waters of such rivers by other users.

* * * * *

SEC. 10. That the following works of improvement for the benefit of navigation and the control of destructive flood waters and other purposes are hereby adopted and authorized in the interest of the national security and with a view toward providing an adequate reservoir of useful and worthy public works for the postwar construction program, to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers in accordance with the plans in the respective reports hereinafter designated and subject to the conditions set forth therein * * *.

* * * * *

SAVANNAH RIVER BASIN

The general plan for the comprehensive development of the Savannah River Basin for

flood control and other purposes recommended by the Chief of Engineers in House Document Numbered 657, Seventy-eighth Congress, second session, is approved and the construction of the Clark Hill Reservoir on the Savannah River in South Carolina and Georgia, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in that report at an estimated cost of $35,300,000.

STATEMENT AND DISCUSSION

This is a companion case to *United States* v. *Twin City Power Company,* 215 F. 2d 592 (C.A. 4), certiorari granted, 348 U. S. 910, No. 21, this Term. The facts of the two cases are substantially the same and the legal issue, as the court below stated (*infra,* p. 1a), is identical.

Both No. 21 and this case arose out of condemnation proceedings instituted by the United States in implementation of a plan, approved by Congress (see the Act of December 22, 1944, *supra*), for the comprehensive development of the Savannah River basin. In No. 21, Twin City Power Company owned the condemned tracts involved. Here, Twin City Power Company's 100% subsidiary, Twin City Power Company of Georgia, is the condemnee. In both instances, the lands in question abut the navigable Savannah River. In No. 21, however, the tracts are in South Carolina, whereas in the instant case they are located on the Georgia side of the state line. This circumstance, of course, necessitated institution of proceedings in two different

district courts. But the two district judges appointed the same commissioners, so that joint proceedings might be held, and the records do not differ in any material respect. In each case the ultimate outcome of the proceeding was to allow to the respective condemnees a special, greatly enhanced valuation based upon the land's adaptability to use as a site for hydroelectric power operations. See district court opinion of August 27, 1953, R. 100-112.

In upholding this result, the court below gave its "full approval" (*infra*, p. 3a) to the opinion in the companion case rendered by the Court of Appeals for the Fourth Circuit. It recognized, at the same time (*infra*, pp. 3a-4a, 8a), that its views were inconsistent with the position taken by the Court of Appeals for the Ninth Circuit in two cases with which the Government's petition in No. 21 (pp. 16-18) alleged a conflict.

The same reasons for granting a writ of certiorari which obtained in No. 21 apply with equal force here. Instead of restating these reasons, we respectfully refer the Court to the petition filed in that case.*

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* The same basic issue, though arising in a different factual setting, is also presented in No. 41, this Term, *United States v. Virginia Electric and Power Company*, pending on petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

JULY 1955.